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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 JOHN L. RODOPHELE JR.,

8 Plaintiff,

9 v.

10 LIBERTY MUTUAL INSURANCE
11 COMPANY et al.,

12 Defendants.
13

Case No. 2:19-cv-00351-RFB-NJK

**ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE REMANDED TO
STATE COURT**

14 **I. INTRODUCTION**

15 On April 12, 2019, the Court found that the Petition for Removal (ECF No. 1) did not
16 adequately establish the amount in controversy and ordered Defendant to show cause why the
17 Court should not remand the case to state court. The Court has reviewed Defendant's Response
18 and Supplemented Petition (ECF Nos. 10, 11), Plaintiff's Opposition (ECF No. 12), and
19 Defendant's Reply (ECF No. 14).

20 The Court continues to find the amount in controversy inadequately established and
21 therefore remands this case to state court.
22

23 **II. PROCEDURAL STANDARD**

24 Plaintiff sued Defendant on January 28, 2019 in the Eighth Judicial District Court of
25 Nevada, claiming injuries resulting from Plaintiff falling in Defendant's retail store. In the
26 complaint, Plaintiff seeks general damages in an amount exceeding \$15,000, special damages,
27 economic damages, costs and interests, and attorney's fees.
28

1 **III. LEGAL STANDARD**

2 Federal courts are courts of limited jurisdiction. In re Hunter, 66 F.3d 1002, 1005 (9th Cir.
3 1995). A federal court therefore has a *sua sponte* obligation to ensure that it has subject matter
4 jurisdiction. Kwai Fun Wong v. Beebe, 732 F.3d 1030, 1036 (9th Cir. 2013) (citations omitted);
5 see also Gonzalez v. Thaler, 565 U.S. 134, 141 (2012) (“When a requirement goes to subject-
6 matter jurisdiction, courts are obligated to consider *sua sponte* issues that the parties have
7 disclaimed or have not presented.”). Indeed, “subject matter jurisdiction can never be waived or
8 forfeited.” Gonzalez, 565 U.S. at 134.

9 A defendant may remove a case initially filed in state court to federal court if the federal
10 court would have had original jurisdiction. 28 U.S.C. § 1441(a). When a case is removed solely
11 under 28 U.S.C. § 1441(a), all defendants that have been properly joined and served must either
12 join in, or consent to, removal. 28 U.S.C. § 1446(b)(2).

13 “Removal and subject matter jurisdiction statutes are strictly construed, and a defendant
14 seeking removal has the burden to establish that removal is proper and any doubt is resolved
15 against removability.” Hawaii ex rel. Louie v. HSBC Bank Nev., N.A., 761 F.3d 1027, 1034 (9th
16 Cir. 2014) (citation and quotation marks omitted). A federal court should remand a case to state
17 court if any doubt exists as to the right to removal. Matheson v. Progressive Specialty Ins. Co.,
18 319 F.3d 1089, 1090 (9th Cir. 2003) (footnote omitted). Further, when “it is unclear or ambiguous
19 from the face of a state-court complaint whether the requisite amount in controversy is pled, the
20 removing defendant bears the burden of establishing, by a preponderance of the evidence, that the
21 amount in controversy exceeds the jurisdictional threshold.” Urbino v. Orkin Servs. of California,
22 Inc., 726 F.3d 1118, 1121–22 (9th Cir. 2013).

23 Federal courts have original jurisdiction over actions where the matter in controversy is
24 greater than \$75,000 if there is complete diversity between the plaintiff and each defendant. 28
25 U.S.C. § 1332(a). Speculation regarding the amount in controversy is insufficient to establish
26 removal jurisdiction on the grounds of diversity. See Corral v. Select Portfolio Servicing, Inc.,
27 878 F.3d 770, 774 (9th Cir. 2017); see also Ibarra v. Manheim Investments, Inc., 775 F.3d 1193,
28 1197 (9th Cir. 2015). The Ninth Circuit defines “amount in controversy” as “the amount at stake

1 in the underlying litigation” which includes “any result of the litigation, excluding interests and
2 costs, that entails a payment by the defendant.” Gonzales v. CarMax Auto Superstores, LLC, 840
3 F.3d 644, 648 (9th Cir. 2016) (internal quotations omitted). “This amount includes, *inter alia*,
4 damages (compensatory, punitive, or otherwise) and the cost of complying with an injunction, as
5 well as attorneys’ fees awarded under fee shifting statutes.” Id. at 648–49.

6 7 **III. DISCUSSION**

8 After considering all filings in response to the Court’s Order to Show Cause, the Court
9 finds Defendant has failed to adequately establish the amount in controversy required for diversity
10 jurisdiction. The Court finds that the alleged medical damages in this case are approximately
11 \$56,740.79 and that Plaintiff has already received \$25,000 from a separate policy payment, leaving
12 only \$31,740.79 in medical damages liability for Defendant, well below the \$75,000 jurisdictional
13 threshold.

14 Defendant argues that because Plaintiff requested the full \$250,000 amount under the
15 policy, this full policy amount is the amount in controversy. While the Court agrees that it is
16 possible Plaintiff would seek this amount in litigation, it is not remotely evident on the face of
17 Plaintiff’s complaint. Defendant has not met its burden by a preponderance of the evidence, and
18 because any doubts as to the Court’s jurisdiction must be construed against removability, the Court
19 remands this case.

20 21 **IV. CONCLUSION**

22 **IT IS ORDERED** that the Petition for Removal (ECF No. 1) is DENIED. This case is
23 remanded to state court and back to the Eighth Judicial District Court, Clark County, Nevada, Case
24 Number A-18-783767-C. The Clerk of Court is directed to close this case.

25 DATED: April 25, 2019.

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28 **RICHARD F. BOULWARE, II**
UNITED STATES DISTRICT JUDGE